

## **REMARKS**

The Office Action of May 10, 2006 has been carefully reviewed and these remarks are responsive thereto. Claims 5-17 and 22-26 have been withdrawn. Claim 3 has been amended. Reconsideration of the application in view of the foregoing amendments and following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

### **Specification**

The specification has been objected to on the grounds that the phrase "first portion 16" in paragraph 27 on page 6 should be changed to "first portion 12." This objection is respectfully traversed.

The specification has been amended in non-limiting fashion as suggested by the Examiner to correct this typographical error, and is now believed to be in proper form. Accordingly, the rejection should be withdrawn.

### **Claim Objection**

Claim 3 has been objected to on the grounds that the phrase "an" in line 2 should be changed to "its" to clarify that the thickness of the outer peripheral portion's inner portion is being claimed. This rejection is respectfully traversed.

Claim 3 has been amended in non-limiting fashion as suggested by the Examiner to more clearly define that which is claimed. Accordingly, the rejection is improper and should be withdrawn.

## **Section 102**

### **Claims 1, 2 and 4**

Claims 1, 2, and 4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 2,515,554 to Freeman (“Freeman”). This rejection is respectfully traversed.

Freeman discloses a rubber bathing cap 10 having a stiffening rib 11 formed around its free edge and ribs 16 extending about a central portion of cap 10.

Freeman does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user’s head and having a first durometer, and a second portion secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, as required by independent claim 1.

The cap 10 of Freeman is formed of rubber, as is the stiffening rib 11 and ribs 16. There is no disclosure or teaching in Freeman of a first portion having a first durometer and a second portion with a second durometer. Each of cap 10, stiffening rib 11 and ribs 16 of Freeman have the same durometer, since they are formed of the same material.

Accordingly, the rejection is improper and should be withdrawn.

### **Claims 1 and 3**

Claims 1 and 3 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 2,295,659 to Howland (“Howland”). This rejection is respectfully traversed.

Howland discloses a bathing cap formed of rubber, or the like. The cap has a body 20 and ribs 24 or 35, which are also formed of rubber, or the like. The lower edge 34 has an increased thickness.

Each portion of Howland is formed of the same material, namely, rubber, or the like, and, therefore, has the same durometer. There is no disclosure or teaching in Howland of a first

portion having a first durometer and a second portion with a second durometer.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

#### **Claims 18-21**

Claims 18-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of U.S. Patent No. 56,052,825 to Dodd ("Dodd"). Dodd is cited as disclosing a swim cap formed from silicon or latex. This rejection is respectfully traversed.

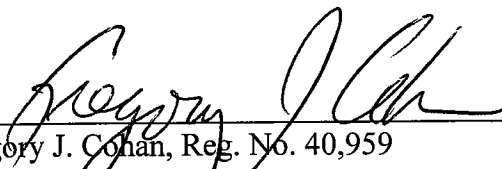
Dodd fails to overcome the deficiencies of Freeman noted above. Specifically, Dodd does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer, and a second portion secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, as required by independent claim 1, from which claims 18-21 depend.

The cap of Dodd is also formed of a single material. Accordingly, the rejection is improper and should be withdrawn.

### **Conclusion**

Pending claims 1-4 and 14-21 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Examination of withdrawn claims 5-17 and 22-26 is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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